

14CV2073

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court for the Southern District of New York

Name

Edward Green

Prisoner Identification No.

08-A-5510

Place of Confinement

P.O. Box 338

Eastern New York Corr. Fac., Nanauoch, N.Y. 12458

Name of Petitioner (include name under which convicted)

Edward Green

Name of Respondent (warden or superintendent of your prison)

v. The State of New York

PETITION

1. Name and location of court which entered the judgment of conviction under attack New York State
Supreme Court, 100 Centre Street, NY, NY 10013
2. Name and address of lawyer who represented you Mr. Arnold J. Roth, 350 Broadway
Suite 1201 New York, NY 10013
3. Date of judgment of conviction October 8 2008
4. Length of sentence 15 YRS. Term.
5. Nature of offense involved (all counts) Criminal possession of a controlled
Substance in the First and Third degrees and two
Counts of criminally using drug paraphernalia in the
Second degree

6. What was your plea? (Check one)

- (a) Not guilty ☒
- (b) Guilty ☐
- (c) Nolo contendere ☐

If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒
 (b) Judge only ☐

8. Did you testify at the trial?

- Yes ☐ No ☒

9. Did you appeal from the judgment of conviction?

- Yes ☒ No ☐

10. If you did appeal, answer the following:

- (a) Name of court The Appellate Division - First Department
 (b) Name and address of lawyer who represented you Natalie Lee, Associate Appellate Counsel, 199 Water St. NY, NY 10038
 (c) Result Denied
 (d) Date of result and citation, if known March 24, 2011
 (e) Grounds raised Ineffective Assistance of Counsel

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

- (1) Name of court New York State Court of Appeals
 (2) Name and address of lawyer who represented you Natalie Lee, 199 Water Street, NY, NY 10038
 (3) Result Denied
 (4) Date of result and citation, if known _____
 (5) Grounds raised _____

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

- (1) Name and address of lawyer who represented you _____

1. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

2. If your answer to 11 was "yes," give the following information:

- (a) (1) Name of court: New York State Appellate Division - First Dept
- (2) Name and address of lawyer who represented you: Self Edward Green 08A5510
Self Eastern Correctional Soc. Nazareth, NY
12458-0338
- (3) Nature of proceeding: Writ of Error Coram Nobis
- (3) Grounds raised: Ineffective Assistance of Counsel; Waste
The stipulation and return case back to Court calendar;
The verdict is against the weight of the evidence
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒
- (5) Date motion was filed with the Court: October 2011
- (6) Date and result of motion: January 18, 2013 / Denied

(b) As to any second petition, application or motion give the same information:

- (1) Name of court: _____
- (2) Name and address of lawyer who represented you: _____
- (3) Nature of proceeding: _____
- (4) Grounds raised: _____
- _____
- _____
- (5) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐
- (6) Date motion was filed with the Court: _____
- (7) Date and result of motion: _____

(c) Did you appeal to the highest state court having jurisdiction the decision on any petition, application or motion?

(1) First petition, etc.

Yes ☐

No ☒

(2) Second petition, etc.

Yes ☐

No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

In light of the fact that the appellate court did not mail its decision directly to me, by the time I received it from the office of the District Attorney by way of notice of entry, an appeal to the NYS Court of Appeals was time barred.

13. STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY . EACH GROUND SHOULD BE SET FORTH UNDER A SEPARATELY NUMBERED PARAGRAPH . IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL , YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF OR ITS TABLE OF CONTENTS . YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY .

Ground(s):

1. Ineffective Assistance of Counsel

2. The verdict was against the weight of the evidence

3. Request that the stipulation entered into by the trial counsel and the District Attorney be vacated and the case be restored back to the trial calendar

(attach additional papers as necessary)

14. **TIMELINESS OF PETITION:** If your judgment of conviction was made final over one-year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

(I) A 1- year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made

retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

(a) If so, give the name and location of court in which the petition or appeal is pending _____

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3-13-2014
(date)

Edward Green

Signature of Petitioner

08A5510

Inmate Number

EASTERN N.Y.C.F.
P.O. Box 338

Address

NAPANOCH, N.Y. 12958

I declare under penalty of perjury that on 3-13-2014, I delivered this petition to prison authorities to be
(date)

mailed to the United States District Court for the Southern District of New York.

Edward Green

Signature of Petitioner